

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

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Evan C. Hollander  
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Emmanuel Fua

*Counsel for TELUS International (U.S.) Corporation*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	)	
	)	Chapter 11
SEARS HOLDINGS CORPORATION., <i>et al.</i> ,	)	
	)	Case No. 18-23538-RDD
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	

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**DECLARATION OF MARY ANTONETTE MUNOZ PURSUANT TO 28 U.S.C. § 1746**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings, Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holding Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Product, Inc.(8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

I, Mary Antonette Munoz, declare under penalty of perjury that the following is true and correct:

1. I am an individual over 21 years of age and am competent to testify and to provide this declaration in support of the *Emergency Motion of TELUS International (U.S.) Corporation for an Order (I) Lifting the Automatic Stay to Allow It to Terminate Master Outsourced Services Agreement; or, in the Alternative (II) Compelling Assumption or Rejection of Executory Contract* (the “**Motion**”).

2. I am a Site Lead and Senior Director TELUS International (U.S.) Corporation (“**TELUS**”). I have been employed by TELUS since November 2017.

3. On March 1, 2013, TELUS, as supplier, entered into a Master Outsourced Services Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the “**MOSA**”) with Sears Holdings Management Corporation (“**SEARS**”), as customer. On May 1, 2014, TELUS and SEARS also entered into a Statement of Work #2 (as amended, restated, supplemented, or otherwise modified from time to time, the “**SOW**”). Pursuant to the MOSA and SOW, TELUS has supported SEARS’s “online sales & service” line of business since May 2013 and its “Mattress Care” business since May 2017 through, among other things, the deployment of over 200 of TELUS’s customer service agents.

4. On March 11, 2019, Ronald Donohoe, Division Vice President and Head of Member Services at SEARS (“**Mr. Donohoe**”) contacted me by email to discuss the sale of assets by SEARS to Transform HoldCo LLC (the “**Buyer**”). In one of his emails, he noted that “existing contracts need to be either assumed or new ones drafted.” A true and correct copy of my and Mr. Donohoe’s email correspondence is attached hereto as Exhibit A.

5. On March 14, 2019, I participated in a telephone call with Mr. Donohoe and his team. On the call, Mr. Donohoe indicated that he was speaking on behalf of both SEARS and the Buyer, and gave TELUS two options with respect to the MOSA. The first option was to agree to "assign" the contract to the Buyer. Under the first option, TELUS would abandon its pre-petition claim of approximately \$1.65MM and its post-petition claim for unpaid invoices of approximately \$1.01MM. The second option was to enter into a new contract with the Buyer. Under the second option, TELUS would not have to abandon its pre- and post-petition claims against SEARS.

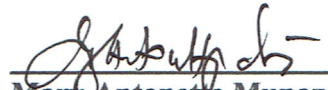
6. On March 21, 2019, I had another telephone conference with Mr. Donohoe and his team (specifically Amy Abbott-Hobsen and Peter Debruin). I was joined by several members of the TELUS team as well, including Rajiv Dhand, Rick Rodick, and Jeff Brown. On that call, Mr. Donohoe again stated that he was speaking on behalf of both SEARS and the Buyer. He made clear that SEARS would no longer honor its obligations under the MOSA, and the neither the Buyer nor SEARS would pay TELUS any portion of its pre- or post-petition claims. Mr. Donohoe thus made it clear that under both options noted above, TELUS would not be paid for its continued post-petition services to SEARS.

7. A true and correct copy of a letter sent by TELUS to SEARS, dated March 22, 2019, noticing SEARS's default under the MOSA and SOW is attached as Exhibit B.

8. A true and correct copy of a letter sent by the Buyer to TELUS, dated March 29, 2019, demanding that SEARS continue to perform under the MOSA is attached as Exhibit C.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: April 3, 2017  
Manila, Philippines

  
\_\_\_\_\_  
Mary Antonette Munoz

**EXHIBIT A**

**Fua, Emmanuel**

---

**From:** D'Aversa, Raniero  
**Sent:** Friday, March 29, 2019 7:28 PM  
**To:** Fechik, Matthew; Litterine-Kaufman, David; Asher, Jennifer  
**Subject:** Fwd: UPDATE: Telus/ Transform Holdco  
**Attachments:** Overview of Transform Holdings (1).pdf

Raniero D'Aversa

----- Original Message -----

From: Jeff Brown <[jeff.brown@telusinternational.com](mailto:jeff.brown@telusinternational.com)>  
Date: Fri, Mar 29, 2019, 6:42 PM  
To: "D'Aversa, Raniero" <[rdaversa@orrick.com](mailto:rdaversa@orrick.com)>  
Subject: Fwd: UPDATE: Telus/ Transform Holdco



**Jeff Brown**  
VP - General Counsel | Law & Governance  
M: 720.726.0677

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[telusinternational.com](http://telusinternational.com)

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----- Forwarded message -----

From: **Anne Munoz** <[anne.munoz@telusinternational.com](mailto:anne.munoz@telusinternational.com)>  
Date: Thu, Mar 14, 2019 at 2:27 PM  
Subject: UPDATE: Telus/ Transform Holdco  
To: Michel Belec <[Michel.Belec@telus.com](mailto:Michel.Belec@telus.com)>, Jeff Brown <[jeff.brown@telusinternational.com](mailto:jeff.brown@telusinternational.com)>, Chuck Koskovich <[chuck.koskovich@telusinternational.com](mailto:chuck.koskovich@telusinternational.com)>, Rick Rodick <[rick.rodick@telusinternational.com](mailto:rick.rodick@telusinternational.com)>  
Cc: Rajiv Dhand - TI <[Rajiv.dhand@telusinternational.com](mailto:Rajiv.dhand@telusinternational.com)>, Manny Jao <[manny.jao@telusinternational.com](mailto:manny.jao@telusinternational.com)>

Team,

I had a quick call with the Sears team led by Ronald Donohoe & here is the summary of the call:

- Confirmed that Sears holding was sold and has a **new entity – Transform Holdings Co.**
- Transform HoldCo bought virtually bought all assets
- Attached deck was shared on the call – outlining the old vs new entity and their strategy

- They wanted TI to continue to be their partner but because of the new entity we are posed with a decision and we have two options

**Option 1: Assign our existing contract from Sears Holding to Transform HoldCo**

- On this option we **cannot** make claim on the amount Sears owed us Pre-petition = **\$1.65MM**
- We can also **not hold claim** to the amount Post petition (*any invoice not yet paid from Dec to Feb 11*) = **~ \$1.01MM**

DEC-2018 TOTAL: 506,794.12 due 18-MAR 2019

JAN-2019 TOTAL: USD 397,962.00 due 23-APR 2019

FEB-2019 Approximate TOTAL: USD 108,905.72 Feb 1 – 11

**Option 2: Create a new contract under Transform HoldCo**

- On this option we **can hold claim** to the post-petition amount of **~\$1.01MM**
- we can **still hold claim** for the **\$1.65MM** pre-petition amount on the bankruptcy court

- He told me to consult TI finance and our legal counsel what option we will take
- BAR date will be on April 10.
- If we choose Option 2 they need to be closed before BAR date of April 10
- Ron has offered to meet our Finance and Legal team face to face or via phone/skype the soonest to answer questions
- He offered his team to answer any questions including Mike Masch – CFO for Call Center services
- He also offered to even bring in Transform HoldCo CFO – Rob Reicker to meet with our leadership if needed
- He will wait for my update or call Fri or Mon of next week

What will be our next steps?

Do you want me to set up an internal call as early as Mon to calibrate internally what our immediate next steps will be?

**Anne Munoz**

Site Leader | Araneta & CCO Discovery Operations

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On Wed, Mar 13, 2019 at 1:27 AM Michel Belec <[Michel.Belec@telus.com](mailto:Michel.Belec@telus.com)> wrote:

Hi Jeff,

[REDACTED]

Regards

Michel E. Belec

SVP, CLO & Corporate Secretary | Law & Governance

T: 604 .695.6400 M: 604.202.9105

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[telusinternational.com](http://telusinternational.com)



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On Mar 12, 2019, at 10:53 PM, Jeff Brown <[jeff.brown@telusinternational.com](mailto:jeff.brown@telusinternational.com)> wrote:

Team:



**Jeff Brown**

VP - General Counsel | Law & Governance

M: 720.726.0677

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On Tue, Mar 12, 2019 at 8:39 AM Rajiv Dhand <[rajiv.dhand@telusinternational.com](mailto:rajiv.dhand@telusinternational.com)> wrote:

+Michel/Rick/Chuck

Adding TI SLT as this was a topic of discussion during the Board Meeting, last week. And we had decided to get the Michel and SLT involved during any contract negotiation and/or extension.

While Anne will try to get more information, the way I read the mail is that they want a new contract with the new organization ESL/Transform Holdco – Eddie Lampert's company.

Should we get a call pull togethr in the next couple of days to decide next steps?



**From:** Anne Munoz <[anne.munoz@telusinternational.com](mailto:anne.munoz@telusinternational.com)>  
**Date:** Tuesday, 12 March 2019 at 10:38 PM  
**To:** Rajiv Dhand <[rajiv.dhand@telusinternational.com](mailto:rajiv.dhand@telusinternational.com)>, Jeff Brown  
<[jeff.brown@telusinternational.com](mailto:jeff.brown@telusinternational.com)>  
**Subject:** Fwd: Telus/ Transform Holdco

Team, FYI How do we proceed

I will set up a brief call with him to get more clarity

----- Forwarded message -----

**From:** Donohoe, Ronald <[Ronald.Donohoe@searshc.com](mailto:Ronald.Donohoe@searshc.com)>  
**Date:** Mon, Mar 11, 2019 at 8:02 AM  
**Subject:** RE: Telus/ Transform Holdco  
**To:** Anne Munoz <[anne.munoz@telusinternational.com](mailto:anne.munoz@telusinternational.com)>  
**Cc:** Mash, Michael <[Michael.Mash@searshc.com](mailto:Michael.Mash@searshc.com)>, Aranha, Peter <[Peter.Aranha@searshc.com](mailto:Peter.Aranha@searshc.com)>, Abbott-Hobson, Amy <[Amy.Abbott-Hobson@searshc.com](mailto:Amy.Abbott-Hobson@searshc.com)>, Roberts, Dawn  
<[Dawn.Roberts@searshc.com](mailto:Dawn.Roberts@searshc.com)>

Anne, I will be out of the office today for a funeral...perhaps tomorrow?

This centers on the sale of virtually all the assets of Sears Holdings to ESL / Transform Holdings on Feb 11.

As such, the existing contacts need to be either assumed or new ones drafted.

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**From:** Anne Munoz [mailto:[anne.munoz@telusinternational.com](mailto:anne.munoz@telusinternational.com)]  
**Sent:** Monday, March 11, 2019 3:13 AM  
**To:** Donohoe, Ronald <[Ronald.Donohoe@searshc.com](mailto:Ronald.Donohoe@searshc.com)>  
**Subject:** Re: Telus/ Transform Holdco

**Enterprise Security Team Alert:** This email originated from outside of the organization. Please use caution when opening messages from external sources.

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Hi Ron, Nice to hear back from you. I am not sure I fully understand the context of your ask for a meeting. Can we get into a quick 15min call sometime today so I can understand the ask?

Regards,

Anne Munoz

Site Leader - Telus International PH

On Mon, Mar 11, 2019 at 7:30 AM Donohoe, Ronald <[Ronald.Donohoe@searshc.com](mailto:Ronald.Donohoe@searshc.com)> wrote:

Anne

I'd like to get some time on schedule this coming week to walk through the future.

We are working across multiple schedules, so we are checking availability of one or more of the folks on my end, including potentially from our Office of the CEO, Rob Riecker and Leena Munjal, our CFO and Chief Digital Officer respectively.

We will want to cover the appetite and conditions to secure a contract quickly, either through assignment or a new agreement with ESL/Transform Holdco

Transform Holdco has a solid balance sheet and will be a strong partner for success. We are anxious to move forward together.

If you would like to meet face to face, we are happy to get on a plane, otherwise we can arrange a call quickly to meet with you and our respective senior teams the later part of this week

Jeanette can work to coordinate schedules on our end.

Thanks,

Ron

Ron Donohoe

Division Vice President, Head of Member Services

O: 847-286-2515

C: 815-243-4338

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**Anne Munoz**

Site Leader | Araneta & CCO Discovery Operations

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**EXHIBIT B**



March 22, 2019

**Delivered in Hand Via Federal Express Overnight Delivery**

Sears Holdings Management Corporation  
3333 Beverly Road  
Hoffman Estates, Illinois 60179  
Attn: Ronald Donoho  
Attn: General Counsel

***Re: Master Outsourced Services Agreement dated as of March 1, 2013 (as amended, restated, supplemented, or otherwise modified from time to time, the “MOSA”), between TELUS International (U.S.) Corporation (“TELUS”), as supplier, and Sears Holdings Management Corporation (“SEARS”), as the customer; Statement of Work #2, dated as of May 1, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the “SOW”), between TELUS, as supplier, and SEARS, as customer; Invoice Number USOP2019000050 = \$446,240.37, USOP2019000053 = \$18,679.58, USOP2019000051 = \$40,024.24 dated January 15, 2018 (the “December Invoice”), delivered by TELUS to SEARS pursuant to the MOSA and the SOW; Notice of breach and repudiation of the MOSA and the SOW by SEARS; Reservation of Rights; Demand for Immediate Payment in Full; Immediate Termination of the MOSA and SOW***

Gentlemen/Ladies:

We write to notify SEARS of the occurrence of multiple breaches by SEARS under the MOSA, including breaches of its covenants and obligations under the MOSA; to demand immediate and full payment of all amounts due under the December Invoice; to immediately terminate the MOSA due to Sears’ express repudiation of the MOSA, and to reserve all of TELUS’s rights and remedies under the MOSA and the SOW in relation to the foregoing. Capitalized terms used but not defined herein shall have the meanings given to them under the MOSA.

**I. Notice of Breach and Repudiation of MOSA.**

This letter shall constitute notice to SEARS of the existence and continuing nature of the following breach of SEARS’s covenants and obligations under the MOSA:

Section 8.6 of the MOSA requires SEARS to pay TELUS's properly submitted invoices within 60 days from the date thereof. TELUS properly submitted the December Invoice to SEARS in accordance with the MOSA and the total amount due thereunder of \$506,794.12 (the "December Amount Due") was due to TELUS by March 18, 2019. SEARS has not disputed the December Amount Due or the December Invoice. Despite several reminders and inquiries by TELUS, SEARS has failed to pay the December Amount Due as of March 22, 2019. By failing to timely pay to TELUS the December Amount Due, SEARS has committed a material breach of the MOSA pursuant to Section 8.6 thereof, and such breach is continuing.

TELUS hereby demands that SEARS immediately pay the December Amount Due in full.

Be further advised that, on March 21, 2019, SEARS expressly repudiated the MOSA and the SOW by notifying TELUS that SEARS would no longer honor its obligations thereunder, thereby excusing any further performance by TELUS. Accordingly, TELUS hereby terminates the MOSA and the SOW, effective immediately. TELUS reserves the right to transition services under the MOSA and the SOW in a manner subject to its sole discretion.

**II. Reservation of Rights and Demand for Immediate Payment in Full.**

Please be advised that the demands made herein are being made pursuant to the terms and provisions of the MOSA and the SOW. By making these demands, TELUS does not waive any of the rights or remedies available to TELUS under the MOSA, the SOW, or otherwise, including without limitation the right to seek reimbursement of costs. No failure to exercise any rights or remedies available to MOSA or the SOW and no delay in exercising any such rights or remedies shall operate as a waiver of any rights which MOSA or the SOW may have pursuant to the terms of the MOSA or the SOW or otherwise. Further, any reference by TELUS to any breach shall in no way constitute, or be construed as, a waiver of any other breach which may now exist or hereafter arise under the MOSA, the SOW or otherwise. TELUS specifically reserves all of its rights and remedies regarding any additional breaches under the MOSA or the SOW enumerated herein or any other breaches and indemnifiable matters that may exist under the MOSA, the SOW, or applicable law.

With regards,

***TELUS International (U.S.) Corporation***



By:

Name: Jeffrey Brown

Title: VP – General Counsel

cc: Rick Rodick, TI CFO  
Raniero D'Aversa, Orrick, Herrington & Sutcliffe LLP



**EXHIBIT C**

## TRANSFORM HOLDINGS

Drew Farkas  
Deputy General Counsel  
Transform SR Holding Management LLC  
3333 Beverly Road  
Hoffman Estates, Illinois 60179  
Phone: (847)286-9259  
Email: drew.farkas@searshc.com

March 29, 2019

### VIA OVERNIGHT

Jeffrey Brown  
VP – General Counsel  
Telus International (U.S.) Corporation  
2251 South Decatur Boulevard  
Las Vegas, Nevada 89102  
Email: [jeff.brown@telusinternational.com](mailto:jeff.brown@telusinternational.com)

Dear Mr. Brown:

TELUS International (U.S.) Corporation (“TELUS”) is required to continue performing under its Master Outsourced Services Agreement dated as of March 1, 2013 (as amended, restated, supplemented, or otherwise modified from time to time, the “MOSA”) with Sears Holdings Management Corporation (“Sears”) because the Bankruptcy Code requires non-debtor counterparties to perform under executory contracts with debtors. *See, e.g., In re Leslie Fay Companies, Inc.*, 166 B.R. 802, 808 (Bankr. S.D.N.Y. 1994) (holding that prior to confirmation of a plan of reorganization “the executory contract remains in effect and nondebtor contracting parties are bound to honor it”); *U.S. on Behalf of Postal Serv. v. Dewey Freight System, Inc.*, 31 F.3d 620, 624 (8th Cir. 1994) (citing *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 532 (1984)) (“After a debtor commences a Chapter 11 proceeding, but before executory contracts are assumed or rejected under § 365(a), those contracts remain in existence, *enforceable by the debtor but not against the debtor.*”) (emphasis in original). The bankruptcy law as stated above nullifies the purported “Notice of Breach and Repudiation of MOSA” as articulated in the March 22, 2019 letter received by Sears from your office.

Notwithstanding the Asset Purchase Agreement entered into by Sears Holdings Corporation and certain of its affiliates (the “Sellers”) and Transform Holdco LLC (the

March 29, 2019  
Jeffrey Brown – Telus  
Page 2

“Buyer”), the TELUS contract currently remains with the Sellers. Rather than purchasing all of the contract rights of the Sellers outright at closing, the Asset Purchase Agreement provides Buyer with a 60-day period post-Closing during which it can designate certain Additional Contracts (such as the TELUS contract) for assumption and assignment (the “Designation Period”). Asset Purchase Agreement §§ 2.7(d), 2.9. The Bankruptcy Court approved proposed procedures for the assumption and assignment of Additional Contracts in the February 8 sale order. *See* Sale Order ¶¶ 33–44.

TELUS continues to be in a contractual relationship with Sears (and continues to be obligated to perform under the contract). Pursuant to a Transition Services Agreement (“TSA”) with Buyer, the Sellers are required to maintain such contractual relationships and allow Buyer to receive the benefit of such contracts during the Designation Period. The Buyer may make contractual payments directly to Sears during the Designation Period under the TSA, but the underlying contract is still between TELUS and Sears—this relationship only changes if the contract is assumed and assigned.

Furthermore, the “Reservation of Rights and Demand for Immediate Payment in Full” is premature and inconsistent with the process and rights afforded Buyer during the Designation Period, as described above, including the right to evaluate the TELUS contract, along with thousands of other contracts, and make its determination as to whether or to assume such contract.

Please confirm that you continue performing all contractual obligations under the MOSA and let us know if you have any questions.

Sincerely,



Drew Farkas  
Deputy General Counsel

Cc: Ron Donohoe ([Ronald.Donohoe@searshc.com](mailto:Ronald.Donohoe@searshc.com))  
Luke A. Barefoot, Cleary Gottlieb Steen & Hamilton LLP ([lbarefoot@cgsh.com](mailto:lbarefoot@cgsh.com))